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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,823	06/23/2005	Aniela Leistner	LEISTNER ET AL 2 PCT	8957

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EXAMINER	
CINTINS, IVARS C	

ART UNIT	PAPER NUMBER
1724	

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/540,823	LEISTNER ET AL.	
	Examiner	Art Unit	
	Ivars C. Cintins	1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *6/23/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claims 1-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of copending Application Serial No. 11/117,671. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of this application are deemed to be obvious variations of the claims in copending Application Serial No. 11/117,671.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6 and 8-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The term "preferably" (claim 6, line 2; claim 8, line 1; and claim 9, line 2) is vague, and indefinite as to the limitations intended. Also, claims 10-12 are indefinite as to the manipulative steps of the recited process.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Abe et al. (U.S. Patent No. 4,202,775; hereinafter "Abe"). The reference discloses an adsorbent material comprising an imidazole-divinylbenzene copolymer (see col. 3,

lines 20 and 37) of the type recited (col. 4, lines 9-12); and further teaches that this adsorbent can be used in the recited manner (see col. 1, line 44 through col. 2, line 3).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abe. The reference discloses the claimed invention with the exception of the specific vinylimidazole employed (claim 2), the relative amounts of divinylbenzene and ethylvinylbenzene employed (claim 3), and the specific surface of the adsorbent material (claim 4). However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ 1- or 4- substituted vinylimidazole in the reference adsorbent, since this reference broadly discloses that imidazoles in general (see col. 2, line 20) may be employed in the formation of its adsorbent material. Also, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the recited percentages of divinylbenzene and ethylvinylbenzene to form the reference polymer, since Abe does not indicate that the relative amounts of these monomers is critical (see col. 6, lines 8, 15, 26, 29, 40-42 and 59-60). Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to produce the adsorbent of the reference such that it has the recited specific surface, in order to enhance its adsorption capability.

Claims 5 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abe as applied above, further in view of Davankov et al. (U.S. Patent Application Publication No. 2003/0027879; hereinafter "Davankov"). Abe discloses the claimed invention with the exception of the manner in which the adsorbent material is prepared. Davankov teaches preparing an adsorbent in the recited manner (see Example 1); and it would have been obvious to one of ordinary skill in the art at the time the invention was made to produce the adsorbent of the primary reference in the manner suggested by Davankov, in order to obtain the advantages disclosed by this secondary reference (i.e. an improved combination of micropores, mesopores and macropores) for the adsorbent of the primary reference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is 571-272-1155. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Duane Smith, can be reached at 571-272-1166.

The centralized facsimile number for the USPTO is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ivars Cintins

Ivars C. Cintins
Primary Examiner
Art Unit 1724

I. Cintins
September 9, 2006